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## Courts - Actions under Laws of Other States - Whether the Courts of Illinois Will Enforce the Taxing Statutes of Another State

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COURTS—ACTIONS UNDER LAWS OF OTHER STATES—WHETHER THE COURTS OF ILLINOIS WILL ENFORCE THE TAXING STATUTES OF ANOTHER STATE—The Supreme Court of Illinois, in the case of *City of Detroit v. Gould*,<sup>1</sup> was faced with the necessity of deciding whether the revenue laws of a sister state ought to be enforced in Illinois. In that case, the city of Detroit, through its treasurer, brought an action in the circuit court<sup>2</sup> to recover past due personal property taxes assessed against the defendant's property located within the corporate boundaries of the plaintiff. The defendant filed a motion to dismiss the complaint on the ground that the revenue laws of a sister state were not entitled to enforcement in Illinois. The trial court sustained the motion and dismissed the complaint. On a direct appeal to the Supreme Court of Illinois,<sup>3</sup> the decision was reversed and the case remanded after that tribunal concluded that the revenue laws of a sister state should be enforced upon principles of comity, irrespective of the requirements of the full faith and credit clause.

The origin of the concept that one state will not enforce the revenue laws of a sister state is attributed to Lord Hardwicke in the case of *Boucher v. Lawson*.<sup>4</sup> In that case, the defendant had contracted to ship a quantity of gold from Portugal to England for the plaintiff. Upon arrival in England the defendant refused to deliver the cargo and interposed the defense that the contract was in violation of a Portuguese revenue law which prohibited the export of gold. Lord Hardwicke refused to give effect to the Portuguese law, because to do so, he felt, would have detrimental effects on English commerce. In several subsequent cases, the English courts refused to allow a foreign revenue law to be used as a defense to an action for breach of commercial contracts.<sup>5</sup> The primary reason for each holding was to prevent foreign revenue laws from clogging English trade. However, in none of these cases was there an attempt to collect a tax due under a foreign statute.

The doctrine made its first appearance in the United States in the case of *Ludlow v. Van Rensselaer*<sup>6</sup> wherein a defendant sought to avoid

<sup>1</sup> 13 Ill. (2d) 297, 146 N. E. (2d) 61 (1957).

<sup>2</sup> It is provided in Mich. Stat. Ann. § 27.605; Comp. Laws Mich. (as amended in 1952) § 609.13, that a Michigan municipal corporation is empowered to bring suits in the courts of other states to collect taxes legally due to Michigan or its political subdivisions.

<sup>3</sup> A direct appeal to the Supreme Court of Illinois was allowed pursuant to Ill. Rev. Stat. 1957, Vol. 2, Ch. 110, § 75.

<sup>4</sup> Cas. t. Hard. 85, 95 Eng. Rep. 53 (1734).

<sup>5</sup> *Holman v. Johnson*, 1 Cowl. 341, 98 Eng. Rep. 1120 (1775); *Planche v. Vletcher*, 1 Dougl. 251, 99 Eng. Rep. 164 (1779); *Sharp v. Taylor*, 2 Phi. 801, 41 Eng. Rep. 1153 (1849); *James v. Catherwood*, 3 Dow. & Ry. 190 (1823).

<sup>6</sup> 1 Johns (3 N. Y.) 94 (1806). See also *Henry v. Sargeant*, 13 N. H. 321, 40 Am. Dec. 146 (1843), wherein it was stated that a Vermont revenue law would not be enforced, but no reasons or authority were given to support such a proposition.

paying a promissory note executed in France on the ground that the note did not contain stamps as required by French law. The court, however, held the note to be valid and stated that it did not sit to enforce the revenue laws of another country. This holding was an application of the rule as set down by Lord Hardwicke in 1734.

The problem of enforcing the revenue laws of a sister state was squarely presented to an American court for the first time in the case of *Maryland v. Turner*.<sup>7</sup> In that case, it was held that the revenue laws of a sister state would be denied enforcement because a revenue law is penal. That conclusion was reached because revenue laws are not contractual like ordinary debts but are enforced contributions to the sovereign and, therefore, penal. The principle thereafter found wide acceptance in the courts of this country.<sup>8</sup> For the most part, the foreign revenue laws were denied enforcement in a state simply because the courts had blindly applied the rule as set down by Lord Hardwicke as precedent. This rule was utilized by the Appellate Court for the First District of Illinois in the earlier case of *Cromley v. Dean*.<sup>9</sup> Since that decision no Illinois reviewing court appears to have had occasion to consider this particular problem and it has been generally accepted that the courts of Illinois would not enforce the revenue laws of a sister state.

Another objection to the enforcement of the revenue laws of another state is that a court may feel reluctant to assume the burden of administering an intricate tax system with which it is unacquainted, and thereby embarrass the taxing state.<sup>10</sup> It is believed, however, that this objection is without merit, for the court would probably have the benefit of prior interpretations by the courts of the taxing state. Further, it is the taxing state which is imploring the court to administer its revenue laws; so that no embarrassment should result when the state itself is present to offer its views on the proper interpretation of the statute. In addition, the enforcement of the revenue laws of a sister state would not contravene the public policy of a state unless one adopts the unwarranted conclusion that each state has a policy against the collection of taxes levied by another state.

The modern view appears to be in favor of enforcing the revenue laws of a sister state.<sup>11</sup> The most frequently cited case in that connection is the

<sup>7</sup> 75 Misc. 9, 132 N. Y. Supp. 173 (1911).

<sup>8</sup> *City of Detroit v. Proctor*, 44 Del. 193, 61 A. (2d) 412 (1948); *Colorado v. Harbeck*, 232 N. Y. 71, 133 N. E. 357 (1921). See also the concurring opinion of Hand, J. in the case of *Moore v. Mitchell*, 30 F. (2d) 600 (1929).

<sup>9</sup> 177 Ill. App. 67 (1913).

<sup>10</sup> Beale, *The Conflict of Laws* (Baker, Voorhis & Co., New York, 1936), Vol. 3, § 610.2, p. 1638.

<sup>11</sup> See *Oklahoma Tax Commission v. Neely*, 225 Ark. 230, 282 S. W. (2d) 150 (1955); *Ohio v. Arnett*, 314 Ky. 403, 234 S. W. (2d) 722 (1950). In *Restatement*,

case of *State ex rel. Oklahoma Tax Commission v. Rodgers*,<sup>12</sup> wherein an appellate court of Missouri held that a revenue law is not penal, for a revenue law defines the extent of the citizen's pecuniary obligation to the state, in return for the protection afforded him by the state; while the sole object of a penal law is to punish a wrongdoer. The court then concluded that a suit for the collection of taxes was an action in the nature of debt for moneys due, and should be enforceable in a sister state. These conclusions formed the basis for the result reached by the Supreme Court of Illinois in the instant case.

After forty-four years of silence in the Illinois law on the subject, the instant case now exhibits a purpose on the part of the Supreme Court of Illinois to follow the modern and more enlightened viewpoint. Inasmuch as the action for the collection of taxes due a sister state is an action in the nature of debt for moneys due, the simplest ideas of comity would seem to compel the enforcement of the revenue laws of the sister state. The contrary doctrine was the product of an earlier commercial world where two sovereigns were in bitter political and economic competition. Such a doctrine has no place in a union of states such as the United States. A taxpayer who enjoys the protection of the government of a particular state should bear his share of the expense of maintaining that government and should not be allowed to escape this obligation by crossing state lines.

J. SINGER

EMINENT DOMAIN—REMEDIES OF OWNERS OF PROPERTY—WHETHER FREQUENT LOW FLIGHTS OVER PRIVATE PROPERTY IN CONNECTION WITH MUNICIPALLY OPERATED AIRPORT AMOUNT TO APPROPRIATION OF SUCH PROPERTY TO A PUBLIC USE—A new question regarding the rights of an owner of realty to the airspace above his property has been answered by the Supreme Court of Washington as a result of its decision in the case of *Ackerman v. Port of Seattle*.<sup>1</sup> Therein, owners of both vacant and improved realty located in the approach area of a municipally owned airport sought to hold the municipality<sup>2</sup> liable for appropriating<sup>3</sup> their property

Conflict of Laws (1948 Supp.), § 610, pp. 174-5, no opinion is expressly stated but it is said therein that the more desirable result would be to enforce foreign revenue laws.

<sup>12</sup> 238 Mo. App. 1115, 193 S. W. (2d) 919 (1946).

<sup>1</sup> — Wash. —, 329 P. (2d) 211 (1958). Mallory, J. filed a dissenting opinion, concurred in by Hill, C.J., and Donworth and Ott, JJ.

<sup>2</sup> The plaintiffs also sought to hold all scheduled airlines using the airport liable, but the municipality is the only defendant in this appeal because the airlines have made a settlement with the plaintiffs.

<sup>3</sup> A nuisance theory of liability and a trespass theory of liability were also set forth in the complaint, but consideration of these theories is outside the scope of this paper.